

AMENDED IN ASSEMBLY FEBRUARY 29, 2016

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 7

Introduced by Senator Hernandez

(Principal coauthor: Assembly Member Wood)

(Coauthors: Senators Allen, Block, Leno, McGuire, and Mitchell)

July 16, 2015

An act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 7, as amended, Hernandez. Tobacco products: minimum legal age.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under 18 years of age. Under existing law, a person is prohibited from making various promotional or advertising offers of smokeless tobacco products without taking actions to ensure that the product is not available to persons under 18 years of age. Existing law also requires the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 18 years of age.

This bill would extend the applicability of those provisions to persons under 21 years of age. The bill would authorize the State Department of Public Health to conduct random, onsite sting inspections of tobacco product retailers with the assistance of persons under 21 years of age.

The bill would also provide that the STAKE Act does not invalidate existing local government ordinances or prohibit the adoption of local government ordinances requiring a more restrictive legal age to purchase or possess tobacco products.

Existing law makes it a crime, punishable by a fine of \$75 or 30 hours of community service work, for a person under 18 years of age to purchase, receive, or possess certain tobacco products. Existing law requires 25% of certain fines to be paid to the city or county for the administration and cost of that community service work component. Existing law immunizes a person under 18 years of age from prosecution for those actions when they were taken while participating in specified enforcement activities.

This bill would delete those provisions.

This bill would incorporate additional changes to Section 22958 of the Business and Professions Code and Section 308 of the Penal Code proposed by SB 5 and AB 6 in the 2nd Extraordinary Session of the 2015–16 Legislative Session. Those other bills would include an electronic device that delivers nicotine or other vaporized liquids in the definition of a tobacco product. If this bill and those bills are enacted, as specified, and this bill is enacted last, then this bill would prohibit selling, advertising, or furnishing an electronic device that delivers nicotine or other vaporized liquids, as specified, to persons under 21 years of age.

By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17537.3 of the Business and Professions
- 2 Code is amended to read:
- 3 17537.3. The following acts are prohibited:
- 4 (a) For ~~a~~ any person to offer as part of an advertising plan or
- 5 program, promotional offers of smokeless tobacco products which

1 require proof of purchase of a smokeless tobacco product unless
2 it carries a designation that the offer is not available to persons
3 under 21 years of age. Each promotional offer shall include in any
4 mail-in coupon a statement requesting purchasers to verify that
5 the purchaser is 21 years of age or older.

6 (b) For ~~a~~ *any* person to honor mail-in and telephone requests
7 for promotional offers of smokeless tobacco products unless
8 appropriate efforts are made to ascertain that a purchaser is over
9 21 years of age. For purposes of this subdivision, appropriate
10 efforts to ascertain the age of a purchaser ~~include~~, *includes*, but
11 ~~are~~ *is* not limited to, requests for a purchaser's birth date.

12 (c) For ~~a~~ *any* person by any means, as part of an advertising
13 plan or program, to distribute free samples of smokeless tobacco
14 products within a two-block radius of any premises or facilities
15 whose primary purpose is directed toward persons under 21 years
16 of age including, but not limited to, schools, clubhouses, and youth
17 centers, when those premises are being used for their primary
18 purposes.

19 (d) For ~~a~~ *any* person to distribute, as part of any advertising plan
20 or program, unsolicited samples of smokeless tobacco products
21 through a mail campaign.

22 SEC. 2. Section 22951 of the Business and Professions Code
23 is amended to read:

24 22951. The Legislature finds and declares that reducing and
25 eventually eliminating the illegal purchase and consumption of
26 tobacco products by any person under 21 years of age is critical
27 to ensuring the long-term health of our state's citizens.
28 Accordingly, California must fully comply with federal regulations,
29 particularly the "Synar Amendment," that restrict tobacco sales to
30 minors and require states to vigorously enforce their laws
31 prohibiting the sale and distribution of tobacco products to persons
32 under 18 years of age. Full compliance and vigorous enforcement
33 of the "Synar Amendment" requires the collaboration of multiple
34 state and local agencies that license, inspect, or otherwise conduct
35 business with retailers, distributors, or wholesalers that sell tobacco.

36 SEC. 3. Section 22952 of the Business and Professions Code
37 is amended to read:

38 22952. The State Department of Public Health shall do all of
39 the following:

1 (a) Establish and develop a program to reduce the availability
2 of tobacco products to persons under 21 years of age through the
3 enforcement activities authorized by this division.

4 (b) Establish requirements that retailers of tobacco products
5 post conspicuously, at each point of purchase, a notice stating that
6 selling tobacco products to anyone under 21 years of age is illegal
7 and subject to penalties. The notice shall also state that the law
8 requires that all persons selling tobacco products check the
9 identification of a purchaser of tobacco products who reasonably
10 appears to be under 21 years of age. The warning signs shall
11 include a toll-free telephone number to the department for persons
12 to report unlawful sales of tobacco products to any person under
13 21 years of age.

14 (c) Provide that primary responsibility for enforcement of this
15 division shall be with the department. In carrying out its
16 enforcement responsibilities, the department shall conduct random,
17 onsite sting inspections at retail sites and shall enlist the assistance
18 of persons that are under 21 years of age in conducting these
19 enforcement activities. The department may conduct onsite sting
20 inspections in response to public complaints or at retail sites where
21 violations have previously occurred, and investigate illegal sales
22 of tobacco products to any person under 21 years of age by
23 telephone, mail, or the Internet. ~~Participation in these enforcement~~
24 ~~activities by a person under 21 years of age does not constitute a~~
25 ~~violation of subdivision (b) of Section 308 of the Penal Code for~~
26 ~~the person under 21 years of age, and the~~ A person under 21 years
27 of age *who participates in these enforcement activities* is immune
28 from prosecution ~~thereunder, or under any other provision of law~~
29 prohibiting the purchase of these products by a person under 21
30 years of age.

31 (d) In accordance with Chapter 3.5 (commencing with Section
32 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
33 the department shall adopt and publish guidelines for the use of
34 persons under 21 years of age in inspections conducted pursuant
35 to subdivision (c) that shall include, but not be limited to, all of
36 the following:

37 (1) An enforcing agency may use persons under 21 years of age
38 in random inspections to determine if sales of cigarettes or other
39 tobacco products are being made to persons under 21 years of age.

1 (2) A photograph or video recording of the person under 21
2 years of age shall be taken prior to each inspection or shift of
3 inspections and retained by the enforcing agency for purposes of
4 verifying appearances.

5 (3) An enforcing agency may use video recording equipment
6 when conducting the inspections to record and document illegal
7 sales or attempted sales.

8 (4) The person under 21 years of age, if questioned about his
9 or her age, need not state his or her actual age but shall present a
10 true and correct identification if verbally asked to present it. Any
11 failure on the part of the person under 21 years of age to provide
12 true and correct identification, if verbally asked for it, shall be a
13 defense to an action pursuant to this section.

14 (5) The person under 21 years of age shall be under the
15 supervision of a regularly employed peace officer during the
16 inspection.

17 (6) All persons under 21 years of age used in this manner by an
18 enforcing agency shall display the appearance of a person under
19 21 years of age. It shall be a defense to an action under this division
20 that the person's appearance was not that which could be generally
21 expected of a person under 21 years of age, under the actual
22 circumstances presented to the seller of the cigarettes or other
23 tobacco products at the time of the alleged offense.

24 (7) Following the completion of the sale, the peace officer
25 accompanying the person under 21 years of age shall reenter the
26 retail establishment and shall inform the seller of the random
27 inspection. Following an attempted sale, the enforcing agency shall
28 notify the retail establishment of the inspection.

29 (8) Failure to comply with the procedures set forth in this
30 subdivision shall be a defense to an action brought pursuant to this
31 section.

32 (e) Be responsible for ensuring and reporting the state's
33 compliance with Section 1926 of Title XIX of the federal Public
34 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing
35 regulations adopted in relation thereto by the United States
36 Department of Health and Human Services. A copy of this report
37 shall be made available to the Governor and the Legislature.

38 (f) Provide that any civil penalties imposed pursuant to Section
39 22958 shall be enforced against the owner or owners of the retail
40 business and not the employees of the business.

1 SEC. 4. Section 22956 of the Business and Professions Code
2 is amended to read:

3 22956. All persons engaging in the retail sale of tobacco
4 products shall check the identification of tobacco purchasers, to
5 establish the age of the purchaser, if the purchaser reasonably
6 appears to be under 21 years of age.

7 SEC. 5. Section 22958 of the Business and Professions Code
8 is amended to read:

9 22958. (a) An enforcing agency may assess civil penalties
10 against any person, firm, or corporation that sells, gives, or in any
11 way furnishes to another person who is under 21 years of age, any
12 tobacco, cigarette, cigarette papers, any other instrument or
13 paraphernalia that is designed for the smoking or ingestion of
14 tobacco, products prepared from tobacco, or any controlled
15 substance, according to the following schedule: (1) a civil penalty
16 of *from* four hundred dollars (\$400) to six hundred dollars (\$600)
17 for the first violation, (2) a civil penalty of *from* nine hundred
18 dollars (\$900) to one thousand dollars (\$1,000) for the second
19 violation within a five-year period, (3) a civil penalty of *from* one
20 thousand two hundred dollars (\$1,200) to one thousand eight
21 hundred dollars (\$1,800) for a third violation within a five-year
22 period, (4) a civil penalty of *from* three thousand dollars (\$3,000)
23 to four thousand dollars (\$4,000) for a fourth violation within a
24 five-year period, or (5) a civil penalty of *from* five thousand dollars
25 (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within
26 a five-year period.

27 (b) (1) In addition to the civil penalties described in subdivision
28 (a), upon the assessment of a civil penalty for the third, fourth, or
29 fifth violation, the department, within 60 days of the date of service
30 of the final administrative adjudication on the parties or payment
31 of the civil penalty for an uncontested violation, shall notify the
32 State Board of Equalization of the violation. The State Board of
33 Equalization shall then assess a civil penalty of two hundred fifty
34 dollars (\$250) and suspend or revoke a license issued pursuant to
35 Chapter 2 (commencing with Section 22972) of Division 8.6 in
36 accordance with the following schedule:

37 (A) A 45-day suspension of the license for a third violation at
38 the same location within a five-year period.

39 (B) A 90-day suspension of the license for a fourth violation at
40 the same location within a five-year period.

1 (C) Revocation of the license for a fifth violation at the same
2 location within a five-year period.

3 (2) The provisions of Chapter 4 (commencing with Section
4 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
5 apply with respect to the collection of the penalty imposed by the
6 State Board of Equalization pursuant to paragraph (1).

7 (c) (1) For each suspension or revocation pursuant to
8 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
9 assessed pursuant to that subdivision, notwithstanding Section
10 22953, shall be deposited into the Cigarette and Tobacco Products
11 Compliance Fund established pursuant to Section 22990. Moneys
12 from that civil penalty deposited into this fund shall be made
13 available to the State Board of Equalization, upon appropriation
14 by the Legislature, for the purposes of meeting ~~the board's~~ *its*
15 duties under subdivision (b).

16 (2) The department shall, upon request, provide to the State
17 Board of Equalization information concerning any person, firm,
18 or corporation that has been assessed a civil penalty for violation
19 of the STAKE Act pursuant to this section when the department
20 has notified the State Board of Equalization of the violation.

21 (d) The enforcing agency shall assess penalties pursuant to the
22 schedule set forth in subdivision (a) against a person, firm, or
23 corporation that sells, offers for sale, or distributes tobacco products
24 from a cigarette or tobacco products vending machine, or a person,
25 firm, or corporation that leases, furnishes, or services these
26 machines in violation of Section 22960.

27 (e) An enforcing agency may assess civil penalties against a
28 person, firm, or corporation that sells or deals in tobacco or any
29 preparation thereof, and fails to post conspicuously and keep posted
30 in the place of business at each point of purchase the notice
31 required pursuant to subdivision (b) of Section 22952. The civil
32 penalty shall be in the amount of two hundred dollars (\$200) for
33 the first offense and five hundred dollars (\$500) for each additional
34 violation.

35 (f) An enforcing agency shall assess penalties in accordance
36 with the schedule set forth in subdivision (a) against a person, firm,
37 or corporation that advertises or causes to be advertised a tobacco
38 product on an outdoor billboard in violation of Section 22961.

39 (g) If a civil penalty has been assessed pursuant to this section
40 against a person, firm, or corporation for a single, specific violation

1 of this division, the person, firm, or corporation shall not be
2 prosecuted under Section 308 of the Penal Code for a violation
3 based on the same facts or specific incident for which the civil
4 penalty was assessed. If a person, firm, or corporation has been
5 prosecuted for a single, specific violation of Section 308 of the
6 Penal Code, the person, firm, or corporation shall not be assessed
7 a civil penalty under this section based on the same facts or specific
8 incident upon which the prosecution under Section 308 of the Penal
9 Code was based.

10 (h) (1) In the case of a corporation or business with more than
11 one retail location, to determine the number of accumulated
12 violations for purposes of the penalty schedule set forth in
13 subdivision (a), violations of this division by one retail location
14 shall not be accumulated against other retail locations of that same
15 corporation or business.

16 (2) In the case of a retail location that operates pursuant to a
17 franchise as defined in Section 20001, violations of this division
18 accumulated and assessed against a prior owner of a single
19 franchise location shall not be accumulated against a new owner
20 of the same single franchise location for purposes of the penalty
21 schedule set forth in subdivision (a).

22 (i) Proceedings under this section shall be conducted pursuant
23 to Section 131071 of the Health and Safety Code, except in cases
24 where a civil penalty is assessed by an enforcing agency other than
25 the department, in which case proceedings shall be conducted
26 pursuant to the procedures of that agency that are consistent with
27 Section 131071 of the Health and Safety Code.

28 *SEC. 5.5. Section 22958 of the Business and Professions Code*
29 *is amended to read:*

30 22958. (a) An enforcing agency may assess civil penalties
31 against any person, firm, or corporation that sells, gives, or in any
32 way furnishes to another person who is under the age of 18 years,
33 21 years of age, any tobacco, cigarette, cigarette papers, any other
34 instrument or paraphernalia that is designed for the smoking or
35 ingestion of tobacco, ~~products prepared from tobacco, tobacco~~
36 ~~products~~, or any controlled substance, according to the following
37 schedule: (1) a civil penalty of ~~from~~ four hundred dollars (\$400)
38 to six hundred dollars (\$600) for the first violation, (2) a civil
39 penalty of ~~from~~ nine hundred dollars (\$900) to one thousand dollars
40 (\$1,000) for the second violation within a five-year period, (3) a

civil penalty of ~~from~~ one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of ~~from~~ three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of ~~from~~ five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

(b) (1) In addition to the civil penalties described in subdivision (a), upon the assessment of a civil penalty for the third, fourth, or fifth violation, the department, within 60 days of the date of service of the final administrative adjudication on the parties or payment of the civil penalty for an uncontested violation, shall notify the State Board of Equalization of the violation. The State Board of Equalization shall then assess a civil penalty of two hundred fifty dollars (\$250) and suspend or revoke a license issued pursuant to Chapter 2 (commencing with Section 22972) of Division 8.6 in accordance with the following schedule:

(A) A 45-day suspension of the license for a third violation at the same location within a five-year period.

(B) A 90-day suspension of the license for a fourth violation at the same location within a five-year period.

(C) Revocation of the license for a fifth violation at the same location within a five-year period.

(2) The provisions of Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code apply with respect to the collection of the penalty imposed by the State Board of Equalization pursuant to paragraph (1).

(c) (1) For each suspension or revocation pursuant to subdivision (b), the civil penalty of two hundred fifty dollars (\$250) assessed pursuant to that subdivision, notwithstanding Section 22953, shall be deposited into the Cigarette and Tobacco Products Compliance Fund established pursuant to Section 22990. Moneys from that civil penalty deposited into this fund shall be made available to the State Board of Equalization, upon appropriation by the Legislature, for the purposes of meeting its duties under subdivision (b).

(2) The department shall, upon request, provide to the State Board of Equalization information concerning any person, firm, or corporation that has been assessed a civil penalty for violation

1 of the STAKE Act pursuant to this section when the department
2 has notified the State Board of Equalization of the violation.

3 (d) The enforcing agency shall assess penalties pursuant to the
4 schedule set forth in subdivision (a) against a person, firm, or
5 corporation that sells, offers for sale, or distributes tobacco products
6 from a cigarette or tobacco products vending machine, or a person,
7 firm, or corporation that leases, furnishes, or services these
8 machines in violation of Section 22960.

9 (e) An enforcing agency may assess civil penalties against a
10 person, firm, or corporation that sells or deals in tobacco or any
11 preparation thereof, and fails to post conspicuously and keep posted
12 in the place of business at each point of purchase the notice
13 required pursuant to subdivision (b) of Section 22952. The civil
14 penalty shall be in the amount of two hundred dollars (\$200) for
15 the first offense and five hundred dollars (\$500) for each additional
16 violation.

17 (f) An enforcing agency shall assess penalties in accordance
18 with the schedule set forth in subdivision (a) against a person, firm,
19 or corporation that advertises or causes to be advertised a tobacco
20 product on an outdoor billboard in violation of Section 22961.

21 (g) If a civil penalty has been assessed pursuant to this section
22 against a person, firm, or corporation for a single, specific violation
23 of this division, the person, firm, or corporation shall not be
24 prosecuted under Section 308 of the Penal Code for a violation
25 based on the same facts or specific incident for which the civil
26 penalty was assessed. If a person, firm, or corporation has been
27 prosecuted for a single, specific violation of Section 308 of the
28 Penal Code, the person, firm, or corporation shall not be assessed
29 a civil penalty under this section based on the same facts or specific
30 incident upon which the prosecution under Section 308 of the Penal
31 Code was based.

32 (h) (1) In the case of a corporation or business with more than
33 one retail location, to determine the number of accumulated
34 violations for purposes of the penalty schedule set forth in
35 subdivision (a), violations of this division by one retail location
36 shall not be accumulated against other retail locations of that same
37 corporation or business.

38 (2) In the case of a retail location that operates pursuant to a
39 franchise as defined in Section 20001, violations of this division
40 accumulated and assessed against a prior owner of a single

1 franchise location shall not be accumulated against a new owner
2 of the same single franchise location for purposes of the penalty
3 schedule set forth in subdivision (a).

4 (i) Proceedings under this section shall be conducted pursuant
5 to Section 131071 of the Health and Safety Code, except in cases
6 where a civil penalty is assessed by an enforcing agency other than
7 the department, in which case proceedings shall be conducted
8 pursuant to the procedures of that agency that are consistent with
9 Section 131071 of the Health and Safety Code.

10 SEC. 6. Section 22963 of the Business and Professions Code
11 is amended to read:

12 22963. (a) The sale, distribution, or nonsale distribution of
13 tobacco products directly or indirectly to any person under 21 years
14 of age through the United States Postal Service or through any
15 other public or private postal or package delivery service at
16 locations, including, but not limited to, public mailboxes and
17 mailbox stores, is prohibited.

18 (b) ~~A~~Any person selling or distributing, or engaging in the
19 nonsale distribution of, tobacco products directly to a consumer
20 in the state through the United States Postal Service or by any
21 other public or private postal or package delivery service, including
22 orders placed by mail, telephone, facsimile transmission, or the
23 Internet, shall comply with the following provisions:

24 (1) (A) Before enrolling a person as a customer, or distributing
25 or selling, or engaging in the nonsale distribution of, the tobacco
26 product through any of these means, the distributor or seller shall
27 verify that the purchaser or recipient of the product is 21 years of
28 age or older. The distributor or seller shall attempt to match the
29 name, address, and date of birth provided by the customer to
30 information contained in records in a database of individuals whose
31 age has been verified to be 21 years ~~of age~~ or older by reference
32 to an appropriate database of government records kept by the
33 distributor, a direct marketing firm, or any other entity. In the case
34 of a sale, the distributor or seller shall also verify that the billing
35 address on the check or credit card offered for payment by the
36 purchaser matches the address listed in the database.

37 (B) If the seller, distributor, or nonsale distributor, is unable to
38 verify that the purchaser or recipient is 21 years of age or older
39 pursuant to subparagraph (A), he or she shall require the customer
40 or recipient to submit an age-verification kit consisting of an

1 attestation signed by the customer or recipient that he or she is 21
2 years of age or older and a copy of a valid form of government
3 identification. For the purposes of this section, a valid form of
4 government identification includes a driver's license, state
5 identification card, passport, an official naturalization or
6 immigration document, such as an alien registration receipt card
7 (commonly known as a "green card") or an immigrant visa, or
8 military identification. In the case of a sale, the distributor or seller
9 shall also verify that the billing address on the check or credit card
10 provided by the consumer matches the address listed in the form
11 of government identification.

12 (2) In the case of a sale, the distributor or seller shall impose a
13 two-carton minimum on each order of cigarettes, and shall require
14 payment for the purchase of any tobacco product to be made by
15 personal check of the purchaser or the purchaser's credit card. No
16 money order or cash payment shall be received or permitted. The
17 distributor or seller shall submit to each credit card acquiring
18 company with which it has credit card sales identification
19 information in an appropriate form and format so that the words
20 "tobacco product" may be printed in the purchaser's credit card
21 statement when a purchase of a tobacco product is made by credit
22 card payment.

23 (3) In the case of a sale, the distributor or seller shall make a
24 telephone call after 5 p.m. to the purchaser confirming the order
25 prior to shipping the tobacco products. The telephone call may be
26 a person-to-person call or a recorded message. The distributor or
27 seller is not required to speak directly with a person and may leave
28 a message on an answering machine or by voice mail.

29 (4) The nonsale distributor shall deliver the tobacco product to
30 the recipient's verified mailing address, or in the case of a sale,
31 the seller or distributor shall deliver the tobacco product to the
32 purchaser's verified billing address on the check or credit card
33 used for payment. No delivery described under this section shall
34 be permitted to any post office box.

35 (c) Notwithstanding subdivisions (a) and (b), if a seller,
36 distributor, or nonsale distributor, complies with all of the
37 requirements of this section and a person under 21 years of age
38 obtains a tobacco product by any of the means described in
39 subdivision (b), the seller, distributor, or nonsale distributor is not
40 in violation of this section.

1 (d) For the purposes of the enforcement of this section pursuant
2 to Section 22958, the acts of the United States Postal Service or
3 other common carrier when engaged in the business of transporting
4 and delivering packages for others, and the acts of a person,
5 whether compensated or not, who transports or delivers a package
6 for another person without any reason to know of the package's
7 contents, are not unlawful and are not subject to civil penalties.

8 (e) (1) (A) For the purposes of this section, a “distributor” is
9 any person or entity, within or outside the state, who agrees to
10 distribute tobacco products to a customer or recipient within the
11 state. The United States Postal Service or any other public or
12 private postal or package delivery service are not distributors within
13 the meaning of this section.

14 (B) A “nonsale distributor” is any person inside or outside of
15 this state who, directly or indirectly, knowingly provides tobacco
16 products to any person in this state as part of a nonsale transaction.
17 “Nonsale distributor” includes the person or entity who provides
18 the tobacco product for delivery and the person or entity who
19 delivers the product to the recipient as part of a nonsale transaction.

20 (C) “Nonsale distribution” means to give smokeless tobacco or
21 cigarettes to the general public at no cost, or at nominal cost, or
22 to give coupons, coupon offers, gift certificates, gift cards, or other
23 similar offers, or rebate offers for smokeless tobacco or cigarettes
24 to the general public at no cost or at nominal cost. Distribution of
25 tobacco products, coupons, coupon offers, gift certificates, gift
26 cards, or other similar offers, or rebate offers in connection with
27 the sale of another item, including tobacco products, cigarette
28 lighters, magazines, or newspapers shall not constitute nonsale
29 distribution.

30 (2) For the purpose of this section, a “seller” is any person or
31 entity, within or outside the state, who agrees to sell tobacco
32 products to a customer within the state. The United States Postal
33 Service or any other public or private postal or package delivery
34 service are not sellers within the meaning of this section.

35 (3) For the purpose of this section, a “carton” is a package or
36 container that contains 200 cigarettes.

37 (f) A district attorney, city attorney, or the Attorney General
38 may assess civil penalties against any person, firm, corporation,
39 or other entity that violates this section, according to the following
40 schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

SEC. 7. Section 22964 is added to the Business and Professions Code, to read:

22964. This division sets forth minimum state restrictions with respect to the legal age to purchase or possess tobacco products and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products. A local standard that imposes a more restrictive legal age to purchase or possess tobacco products shall control in the event of any inconsistency between this division and a local standard.

~~SEC. 8. Section 308 of the Penal Code is amended to read:~~

~~308. (a) (1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.~~

~~Notwithstanding Section 1464 or any other law, 25 percent of each civil and criminal penalty collected pursuant to this~~

1 subdivision shall be paid to the office of the city attorney, county
2 counsel, or district attorney, whoever is responsible for bringing
3 the successful action, and 25 percent of each civil and criminal
4 penalty collected pursuant to this subdivision shall be paid to the
5 city or county for the administration and cost of the community
6 service work component provided in subdivision (b).

7 ~~Proof that a defendant, or his or her employee or agent,~~
8 ~~demand, was shown, and reasonably relied upon evidence of~~
9 ~~majority shall be defense to any action brought pursuant to this~~
10 ~~subdivision. Evidence of majority of a person is a facsimile of or~~
11 ~~a reasonable likeness of a document issued by a federal, state,~~
12 ~~county, or municipal government, or subdivision or agency thereof,~~
13 ~~including, but not limited to, a motor vehicle operator's license, a~~
14 ~~registration certificate issued under the federal Selective Service~~
15 ~~Act, or an identification card issued to a member of the Armed~~
16 ~~Forces.~~

17 ~~For purposes of this section, the person liable for selling or~~
18 ~~furnishing tobacco products to persons under 21 years of age by~~
19 ~~a tobacco vending machine shall be the person authorizing the~~
20 ~~installation or placement of the tobacco vending machine upon~~
21 ~~premises he or she manages or otherwise controls and under~~
22 ~~circumstances in which he or she has knowledge, or should~~
23 ~~otherwise have grounds for knowledge, that the tobacco vending~~
24 ~~machine will be utilized by persons under 21 years of age.~~

25 ~~(2) For purposes of this section, "blunt wraps" means cigar~~
26 ~~papers or cigar wrappers of all types that are designed for smoking~~
27 ~~or ingestion of tobacco products and contain less than 50 percent~~
28 ~~tobacco.~~

29 ~~(b) Every person under 21 years of age who purchases, receives,~~
30 ~~or possesses any tobacco, cigarette, or cigarette papers, or any~~
31 ~~other preparation of tobacco, or any other instrument or~~
32 ~~paraphernalia that is designed for the smoking of tobacco, products~~
33 ~~prepared from tobacco, or any controlled substance shall, upon~~
34 ~~conviction, be punished by a fine of seventy-five dollars (\$75) or~~
35 ~~30 hours of community service work.~~

36 ~~(c)~~
37 ~~Every person, firm, or corporation that sells, or deals in tobacco~~
38 ~~or any preparation thereof, shall post conspicuously and keep so~~
39 ~~posted in his, her, or their place of business at each point of~~
40 ~~purchase the notice required pursuant to subdivision (b) of Section~~

22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense, two hundred fifty dollars (\$250) for the third offense, and five hundred dollars (\$500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d)

For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) Notwithstanding subdivision (b), any person under 21 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, any other instrument or paraphernalia that is designed for the smoking of tobacco, or products prepared from tobacco is immune from prosecution for that purchase, receipt, or possession while participating in either of the following:

(1) An enforcement activity that complies with the guidelines adopted pursuant to subdivisions (c) and (d) of Section 22952 of the Business and Professions Code.

(2) An activity conducted by the State Department of Public Health, a local health department, or a law enforcement agency for the purpose of determining or evaluating youth tobacco purchase rates.

(f)

It is the Legislature's intent to regulate the subject matter of this section. As a result, a city, county, or city and county shall not adopt any ordinance or regulation inconsistent with this section.

SEC. 8. Section 308 of the Penal Code is amended to read:

308. (a) (1) (A) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any

1 controlled substance, is subject to either a criminal action for a
2 misdemeanor or to a civil action brought by a city attorney, a
3 county counsel, or a district attorney, punishable by a fine of two
4 hundred dollars (\$200) for the first offense, five hundred dollars
5 (\$500) for the second offense, and one thousand dollars (\$1,000)
6 for the third offense.

7 **Notwithstanding**

8 (B) *Notwithstanding* Section 1464 or any other law, 25 percent
9 of each civil and criminal penalty collected pursuant to this
10 subdivision shall be paid to the office of the city attorney, county
11 counsel, or district attorney, whoever is responsible for bringing
12 the successful action, and 25 percent of each civil and criminal
13 penalty collected pursuant to this subdivision shall be paid to the
14 city or county for the administration and cost of the community
15 service work component provided in subdivision (b). *action.*

16 **Proof**

17 (C) *Proof* that a defendant, or his or her employee or agent,
18 demanded, was shown, and reasonably relied upon evidence of
19 majority shall be defense to any action brought pursuant to this
20 subdivision. Evidence of majority of a person is a facsimile of or
21 a reasonable likeness of a document issued by a federal, state,
22 county, or municipal government, or subdivision or agency thereof,
23 including, but not limited to, a motor vehicle operator's license, a
24 registration certificate issued under the federal Selective Service
25 Act, or an identification card issued to a member of the Armed
26 Forces.

27 **For**

28 (D) *For* purposes of this section, the person liable for selling or
29 furnishing tobacco products to ~~minors~~ *persons under 21 years of*
30 *age* by a tobacco vending machine shall be the person authorizing
31 the installation or placement of the tobacco vending machine upon
32 premises he or she manages or otherwise controls and under
33 circumstances in which he or she has knowledge, or should
34 otherwise have grounds for knowledge, that the tobacco vending
35 machine will be utilized by ~~minors~~ *persons under 21 years of age.*

36 (2) For purposes of this section, "blunt wraps" means cigar
37 papers or cigar wrappers of all types that are designed for smoking
38 or ingestion of tobacco products and contain less than 50 percent
39 tobacco.

~~(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.~~

~~(e)~~

(b) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense, two hundred fifty dollars (\$250) for the third offense, and five hundred dollars (\$500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

~~(d)~~

(c) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

~~(e) Notwithstanding subdivision (b), any person under 18 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, any other instrument or paraphernalia that is designed for the smoking of tobacco, or products prepared from tobacco is immune from prosecution for that purchase, receipt, or possession while participating in either of the following:~~

~~(1) An enforcement activity that complies with the guidelines adopted pursuant to subdivisions (c) and (d) of Section 22952 of the Business and Professions Code.~~

~~(2) An activity conducted by the State Department of Public Health, a local health department, or a law enforcement agency for the purpose of determining or evaluating youth tobacco purchase rates.~~

~~(f)~~

(d) It is the Legislature's intent to regulate the subject matter of this section. As a result, a city, county, or city and county shall not adopt any ordinance or regulation inconsistent with this section.

SEC. 8.5. *Section 308 of the Penal Code is amended to read:*

308. (a) (1) (A) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, ~~products prepared from tobacco, tobacco products,~~ or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

~~Notwithstanding~~

(B) ~~Notwithstanding~~ Section 1464 or any other law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, ~~and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).~~ action.

~~Proof~~

(C) *Proof* that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

~~For~~

1 (D) For purposes of this section, the person liable for selling or
2 furnishing tobacco products to ~~minors~~ *persons under 21 years of*
3 *age* by a tobacco vending machine shall be the person authorizing
4 the installation or placement of the tobacco vending machine upon
5 premises he or she manages or otherwise controls and under
6 circumstances in which he or she has knowledge, or should
7 otherwise have grounds for knowledge, that the tobacco vending
8 machine will be utilized by ~~minors~~ *persons under 21 years of age*.

9 (2) For purposes of this section, “blunt wraps” means cigar
10 papers or cigar wrappers of all types that are designed for smoking
11 or ingestion of tobacco products and contain less than 50 percent
12 tobacco.

13 ~~(b) Every person under the age of 18 years who purchases,~~
14 ~~receives, or possesses any tobacco, cigarette, or cigarette papers,~~
15 ~~or any other preparation of tobacco, or any other instrument or~~
16 ~~paraphernalia that is designed for the smoking of tobacco, products~~
17 ~~prepared from tobacco, or any controlled substance shall, upon~~
18 ~~conviction, be punished by a fine of seventy-five dollars (\$75) or~~
19 ~~30 hours of community service work.~~

20 (e)
21 (b) Every person, firm, or corporation that sells, or deals in
22 tobacco or any preparation thereof, shall post conspicuously and
23 keep so posted in his, her, or their place of business at each point
24 of purchase the notice required pursuant to subdivision (b) of
25 Section 22952 of the Business and Professions Code, and any
26 person failing to do so shall, upon conviction, be punished by a
27 fine of fifty dollars (\$50) for the first offense, one hundred dollars
28 (\$100) for the second offense, two hundred fifty dollars (\$250) for
29 the third offense, and five hundred dollars (\$500) for the fourth
30 offense and each subsequent violation of this provision, or by
31 imprisonment in a county jail not exceeding 30 days.

32 ~~(d)~~
33 (c) For purposes of determining the liability of persons, firms,
34 or corporations controlling franchises or business operations in
35 multiple locations for the second and subsequent violations of this
36 section, each individual franchise or business location shall be
37 deemed a separate entity.

38 ~~(e) Notwithstanding subdivision (b), any person under 18 years~~
39 ~~of age who purchases, receives, or possesses any tobacco, cigarette,~~
40 ~~or cigarette papers, or any other preparation of tobacco, any other~~

1 instrument or paraphernalia that is designed for the smoking of
2 tobacco, or products prepared from tobacco is immune from
3 prosecution for that purchase, receipt, or possession while
4 participating in either of the following:

5 (1) An enforcement activity that complies with the guidelines
6 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
7 the Business and Professions Code.

8 (2) An activity conducted by the State Department of Public
9 Health, a local health department, or a law enforcement agency
10 for the purpose of determining or evaluating youth tobacco
11 purchase rates.

12 (f)

13 (d) It is the Legislature's intent to regulate the subject matter
14 of this section. As a result, a city, county, or city and county shall
15 not adopt any ordinance or regulation inconsistent with this section.

16 (e) For purposes of this section, "smoking" has the same
17 meaning as in subdivision (c) of Section 22950.5 of the Business
18 and Professions Code.

19 (f) For purposes of this section, "tobacco products" means a
20 product or device as defined in subdivision (d) of Section 22950.5
21 of the Business and Professions Code.

22 SEC. 9. (a) Section 5.5 of this bill incorporates amendments
23 to Section 22958 of the Business and Professions Code proposed
24 by both this bill and Assembly Bill 8 of the Second Extraordinary
25 Session, Senate Bill 5 of the Second Extraordinary Session, and
26 Assembly Bill 6 of the Second Extraordinary Session. It shall only
27 become operative if (1) all bills are enacted, or just this bill and
28 either or both Senate Bill 5 of the Second Extraordinary Session
29 or Assembly Bill 6 of the Second Extraordinary Session are
30 enacted, and become effective on or before January 1, 2017, (2)
31 each bill amends Section 22958 of the Business and Professions
32 Code, and (3) this bill is enacted after Assembly Bill 8 of the
33 Second Extraordinary Session, Senate Bill 5 of the Second
34 Extraordinary Session, and Assembly Bill 6 of the Second
35 Extraordinary Session, in which case Section 5 of this bill shall
36 not become operative.

37 (b) Section 8.5 of this bill incorporates amendments to Section
38 308 of the Penal Code proposed by both this bill and Assembly
39 Bill 8 of the Second Extraordinary Session, Senate Bill 5 of the
40 Second Extraordinary Session, and Assembly Bill 6 of the Second

1 *Extraordinary Session. It shall only become operative if (1) all*
2 *bills are enacted, or just this bill and either or both Senate Bill 5*
3 *of the Second Extraordinary Session or Assembly Bill 6 of the*
4 *Second Extraordinary Session are enacted, and become effective*
5 *on or before January 1, 2017, (2) each bill amends Section 308 of*
6 *the Penal Code, and (3) this bill is enacted after Assembly Bill 8*
7 *of the Second Extraordinary Session, Senate Bill 5 of the Second*
8 *Extraordinary Session, and Assembly Bill 6 of the Second*
9 *Extraordinary Session, in which case Section 8 of this bill shall*
10 *not become operative.*

11 ~~SEC. 9.~~

12 *SEC. 10.* No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

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